IN THE UTAH COURT OF APPEALS

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Utah State Tax Commission, Plaintiff and Appellee, v. H. Douglas Goff and Lisa Goff, Defendants and Appellants.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20040867-CA F I L E D (February 9, 2006) 2006 UT App 37

Third District, Salt Lake Department, 040911367
The Honorable Glenn K. Iwasaki

Attorneys: H. Douglas Goff, Ogden, Appellant Pro Se
Mark L. Shurtleff and Timothy A. Bodily, Salt Lake City, for Appellee

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Before Judges Bench, Davis, and McHugh.

McHUGH, Judge:

H. Douglas and Lisa Goff appeal the writ of mandate entered by the district court compelling them to file true, accurate, and complete Utah individual income tax returns in accordance with Utah Code section 59-1-707. See Utah Code Ann. § 59-1-707 (2004). In response to the Goffs' appeal, the Utah State Tax Commission (Commission) filed a motion for summary disposition. That motion was granted in part and denied in part by this court in Tax Commission v. Goff, 2005 UT App 5 (mem.) (per curiam) (Goff I). We now address the final issue remaining on appeal.[1]

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[1]At oral argument, the Goffs focused on whether the compensation they received during the relevant years could be considered income under the state and federal income tax laws. That question is easily answered in the affirmative. "Utah law defines taxable income as 'all income derived from whatever source, including gross income derived from a business and compensation for services, such as fees, commissions and fringe benefits.'" Nelson v. State Tax Comm'n, 903 P.2d 939, 940 (Utah 1995) (quoting Jensen v. State Tax Comm'n, 835 P.2d 965, 969-70 (Utah 1992)).

The issue before the trial court was whether the Goffs had an obligation to file Utah individual income tax returns for the years in question. The court was not asked to, and did not enter, any findings on the amount of the Goffs' tax liability, if any, for those years. Thus, the subsidiary issues were whether the Goffs were residents of Utah during the relevant time period and whether they had income exceeding the statutory threshold. The record reflects that the Goffs admitted that they were domiciled in Utah during the relevant tax years. Likewise, the other evidence introduced at the evidentiary hearing, including some proffered by the Goffs, establishes that they earned at least enough income during those years to require them to file Utah individual income tax returns.

The Goffs introduced exhibit D-6, which is an affidavit of Daniel Engh with supporting documentation. Engh is an audit manager for the Commission. The documents attached to his affidavit and admitted at the Goffs' request are Commission records, which include information from the IRS concerning the Goffs' earnings during the relevant years. Indeed, the attachments to exhibit D-6 are almost identical to those contained in exhibit P-1. The Engh affidavit also sets forth the statutory thresholds that, if met, trigger a filing requirement. Rather than challenging these documents, the Goffs moved to admit them into evidence; the motion was granted. The Engh affidavit and supporting documentation contain all the evidence necessary to support the writ of mandamus issued by the trial court.

The Goffs argue that exhibit D-6 cannot support the trial court's writ because it was introduced only for the limited purpose of impeachment and that the exhibit was actually entered into evidence by the trial court. The record does not support that contention. When the Goffs began cross-examining Engh by calling his attention to specific paragraphs of his affidavit, the trial court reminded the Goffs that exhibit D-6 had not yet been received into evidence. The Goffs apologized for the oversight, and the trial court asked if there were any objections to the introduction of exhibit D-6. Neither the Commission nor the Goffs registered any objection and the document was received into evidence. When the Goffs were informed that exhibit D-6 had been admitted, they thanked the court and proceeded to use the document during their cross-examination of Engh. At no time did the Goffs seek, or the trial court give, a limiting instruction as to the purposes for which exhibit D-6 could be used. Consequently, exhibit D-6 could have been considered by the court for any purpose.

Rule 105 of the Utah Rules of Evidence provides: "When evidence which is admissible as to one party or for one purpose

but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly." Utah R. Evid. 105 (emphasis added). Utah Rule of Evidence 105 is identical to Federal Rule of Evidence 105, see Utah R. Evid. 105 advisory committee's note (providing that "[t]his provision is the federal rule, verbatim"), and thus, we consider decisions interpreting the federal rule as helpful to our analysis. See State v. Fedorowicz, 2002 UT 67,¶30 n.1, 52 P.3d 1194 ("Although the Federal Rules of Evidence are a separate body of law from the Utah Rules of Evidence, if the reasoning of a federal case interpreting or applying a federal evidentiary rule is cogent and logical, we may freely look to that case, absent a Utah case directly on point, when we interpret or apply an analogous Utah evidentiary rule."); State v. Gray, 717 P.2d 1313, 1317 (Utah 1986) (providing, in reference to the Utah Rules of Evidence, that "[s]ince the advisory committee generally sought to achieve uniformity between Utah's rules and the federal rules, this [c]ourt looks to the interpretations of the federal rules by the federal courts to aid in interpreting the Utah rules").

The failure to request a limiting instruction pursuant to rule 105 is generally fatal to a party's later objection to the general admission of the evidence. See, e.g., Gray v. Busch Entm't Corp., 886 F.2d 14, 16 (2d Cir. 1989) (per curiam) (holding that failure to request limiting instruction meant that evidence could be used for any purpose); United States v. Bridwell, 583 F.2d 1135, 1140 (10th Cir. 1978) (same); see also David P. Leonard, The New Wigmore: Selected Rules of Limited Admissibility § 1.11.1 (rev. ed. 2002); 1 Jack B. Weinstein & Margaret A. Berger, Weinstein's Federal Evidence § 105.07[2] (Joseph A. McLaughlin ed., 2d ed. 2005).

The Goffs entered exhibit D-6 into evidence without any request that its use be limited. Therefore, it was proper for the trial court to consider that exhibit, including the attached Commission records, for any purpose. Exhibit D-6 contained sufficient information from which the trial court could conclude that the Goffs met the statutory threshold triggering an obligation to file Utah individual income tax returns.

In addition, there was opinion testimony offered by Engh that the Goffs' income exceeded the statutory threshold. This testimony was based upon Engh's review of Commission records, which is information "of a type reasonably relied upon by experts in the particular field" of tax assessment. See Utah R. Evid. 703.

Finally, each of the Goffs provided testimony concerning their income during the relevant years. Mrs. Goff testified that she received $33,802 in wages from Bonneville High School in 1996 and that she received approximately $40,000 annually.[2] Similarly, Mr. Goff provided affidavit testimony that he received compensation from private enterprises during the relevant years.

The Goffs' testimony, Engh's opinion, and the attachments to exhibit D-6 provided ample evidence from which the trial court could conclude that the Goffs had met the threshold requirement for filing individual income tax returns. Thus, the mandate was proper even without consideration of exhibits P-1 and P-5.

The judgment of the trial court is affirmed.

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Carolyn B. McHugh, Judge

WE CONCUR:

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Russell W. Bench,
Presiding Judge

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James Z. Davis, Judge

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[2]The Goffs argue that it was a violation of Mrs. Goff's Fifth Amendment privilege against self-incrimination for the questions about her earnings to be posed without any warning to her of the implication of her answers. The Goffs are mistaken. There was no requirement that the court or the Commission warn the Goffs that their testimony might be incriminating. Minnesota v. Murphy, 465 U.S. 420, 429 (1984) (holding that burden is on witness to assert the privilege against self-incrimination); see also Affleck v. Third Judicial Dist. Court, 655 P.2d 665, 666-67 (Utah 1982) (per curiam) (holding that in a civil case, burden is on witness asserting the privilege to show fear of prosecution is more than fanciful or speculative).